

### Newspapers—Circulation.

The meaning of the term "general circulation" must be determined by a process of inclusion and exclusion and a newspaper having a paid circulation of only 163 paid subscriptions cannot be held to have a general circulation in a county having a population of several thousand.

Melvin N. Hoiness, Esq.,  
Deputy County Attorney,  
Billings, Montana.

June 21, 1929.

My dear Mr. Hoiness:

You have requested an opinion whether the Midland Review, a newspaper published in the city of Billings, can qualify as a newspaper of **general circulation** under the provisions of Section 4482 R.C.M. 1921.

You state that the paper in question has been published in Billings since October 7, 1927 every Friday and has a circulation of 3,187 in Billings and 650 on rural routes, all of which are delivered gratis; that it also has a paid subscription circulation of 163.

Section 4482, *supra*, provides, in part, as follows:

"It is hereby made the duty of the county commissioners of the several counties of the state of Montana to contract with some newspaper, published at least once a week, and of general circulation, published within the county, and having been published continuously in such county at least one year, immediately preceding the awarding of such contract, to do and perform all the printing for which said counties may be chargeable; including all legal advertising required by law to be made, blanks, blank books, stationery, election supplies, loose-leaf forms and devices, official publications, and all other printed forms required for the use of such counties, \* \* \* "

In considering whether from the above facts the Midland Review is a newspaper as contemplated by this statute, we find that a newspaper has been defined as follows:

“A newspaper, in the popular acceptance of the word, is a publication issued at regular stated intervals, containing among other things, the current news, or news of the day.” (21 Am. & Eng. Ency. Law—2nd Ed.—p. 533).

“A publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing intelligence of current events and news of general interest.” (Hull vs. King, 38 Min. 349, 37 N.W. 792).

I assume that the Midland Review contains news items of general interest, and I am therefore of the opinion that it comes within the definition of a newspaper. It then remains to be ascertained whether it is a newspaper of general circulation.

What constitutes a newspaper of general circulation has been well discussed in 46 C.J., p. 22, wherein it is stated:

“‘Newspaper of general circulation’ is a term generally applied to a newspaper to which the general public will resort in order to be informed of the news and intelligence of the day, editorial opinion, and advertisements, and thereby to render it probable that the notices or official advertising will be brought to the attention of the general public. As to whether a newspaper is of general circulation is manifestly a matter of substance, and not merely of size. The term ‘general circulation’ is a relative one, and its meaning must be determined by a process of inclusion and exclusion. That which will be of general circulation in a town of a small population cannot be said to be general in a populous city. A newspaper to have the characteristics of a newspaper of general circulation does not necessarily have to be read by all the people of the county. The question as to whether or not a newspaper is one of general circulation involves other elements besides the number of its subscribers, and the size of the community in which it is published and circulates. \* \* \* ”

In applying the process of inclusion and exclusion, as above stated, I am first of the opinion that in considering the general circulation the free circulation must be eliminated for the reason that it is not an established circulation as contemplated by the statute but is subject entirely to the will of the publisher, and may discontinue at any time. Furthermore, the number of papers distributed free is no indication that it is generally read by that number of people, as there is no overt act by the people receiving the paper, as the paying of a subscription, that would show that they were interested in the same. Therefore, in considering the general circulation we are forced to consider only the actual circulation of 163.

In the case of Times Printing Co., vs. Star Pub. Co., 99 Pac. 1041, wherein the court had this question under consideration as to a paper

having a daily circulation of 1,083 in the city of Seattle, which has a population of about 275,000, the court said:

“In view of the charter provision requiring that the paper selected shall be one of general circulation, the purpose of the publication of official notices, the population of the city of Seattle at the time of the acceptance of the proposal, and treating the word ‘general’ as being equivalent in meaning with extensive, and giving to this word a reasonable interpretation, we are constrained to hold that the Noon Star was not a newspaper of general circulation at the time of the acceptance of its proposal to do the city printing. Indeed, we could not reach a different conclusion without unduly restricting the meaning of the word ‘general.’”

In view of the holding in the above case and similar cases cited in the notes in Corpus Juris, above quoted, and taking into consideration the approximate population of Yellowstone county and the paid circulation of the paper, it is my opinion that the Midland Review is not a newspaper of general circulation as contemplated by the statute.

Very truly yours,

L. A. FOOT,

Attorney General.